

Testimony Given By

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On

**" Unlocking America's Potential: How Immigration Fuels Economic Growth
and Our Competitive Advantage "**

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I want to thank Chairman Whitehouse, Ranking Member Grassley, and other distinguished members of this committee for inviting me to testify today.

My perspectives on U.S. high-skilled immigration policy are informed by more than twenty years of research and by speaking to hundreds of workers and dozens of corporate executives to gain insight into how the system works in practice.

I especially want to recognize Senator Grassley's longstanding leadership in pursuing important bipartisan reforms that would create a skilled immigration system fairer to guestworkers, immigrants, and U.S. workers. Importantly for the purposes of this committee, Senator Grassley's bill S.979 *H-1B and L-1 Visa Reform Act of 2023*, co-sponsored by Senators Durbin and Sanders, would yield higher economic growth and better budget outcomes.

I would also like to acknowledge that Senators Braun and Lee submitted an amicus brief to the U.S. Supreme Court in support of a Petition for a Writ of Certiorari in the case of Wash All. of Tech Workers v. DHS, 50 F.4th 164 (D.C. Cir. 2022). At the heart of the case is the Optional Practical Training (OPT) program, which has become one of the largest guestworker programs. A program Congress never authorized, the Department of Homeland Security's conception and administration of the OPT is so poor that the program has effectively no controls, accountability, or worker protections.

The title of this hearing is how *immigration* can fuel economic growth and the country's competitive advantage. But the immigration policy discussion too often conflates immigration with guestworker programs, so at the outset of my testimony I would like to make the distinction between the two. We must be precise in distinguishing between immigration, where a person can stay in the U.S. permanently, versus guestworker programs which grants people temporary non-immigrant status. Unlike immigrants, guestworkers are eligible to enter and temporarily stay in the country only under very specific conditions and with limited rights.

Each guestworker program creates its own *market* that operates distinct from, and under different rules than, the normal labor market. The rules – selection process, duration, wages, protections, standards, job mobility, etc. - determine how a specific guestworker market behaves and how it ultimately impacts the economy and labor market. Designing an effective guestworker program is difficult, and most policymakers, and even researchers, pay far too little attention to the design rules and program implementation that shape the guestworker market's behavior.

There are two overarching principles for guestworker program design:

1. Guestworkers should complement, rather than compete with, the U.S. labor force. The purpose of a guestworker program is to fill labor market gaps so they should supplement rather than substitute for US workers.
2. Government must protect guestworkers from exploitation. Guestworkers, by definition, have fewer rights than citizens and permanent residents and are therefore vulnerable to exploitation. This is true whether the guestworker program operates in the United Arab Emirates or United States, are for skilled workers, like the H-1B, or lesser-skilled workers, like the H-2B.

The U.S. government has failed miserably on both accounts. The H-1B visa, the largest and best known guestworker program, is a textbook example of poorly designed rules creating a guestworker market that undermines H-1B program's *raison d'etre*. The program was created to fill labor shortages for skilled

jobs, but instead it is mostly used to hire cheaper indentured workers to directly compete with the U.S. workforce and subsidize the offshoring of U.S. jobs.

The H-1B is the Outsourcing Visa – Exploited to Offshore Jobs, Depress Wages and Working Conditions, and Fuel Rampant Wage Theft from H-1B Workers

The most common use of the H-1B program is to import computer workers for the information technology (IT) services industry. Table 1 lists the three firms - Cognizant, Infosys, and Tata Consultancy Services - receiving the most H-1B approvals over the past ten years. They received an astonishing 350,000 total approvals, of which 87,000 were to import new foreign workers to the U.S., enough to fully populate a mid-sized city. To place the latter number in context these three firms alone accounted for an average of 8,681 new H-1B workers each year. Since there are 85,000 new visas allocated each year for all employers, that means these three firms alone took 10%, or one-in-ten, of all capped visas for new workers for the past ten years. They are crowding out employers attempting to hire truly specialized talent.

More than twenty years ago, Cognizant, Infosys, and Tata Consultancy Services pioneered the H-1B-outsourcing business model, which was so profitable it quickly came to dominate the IT services industry. They offer customers a way to cut costs by outsourcing their U.S. IT work to a team of on-site (in the US) and offshore workers. Within the industry, this is called the *global delivery model*. The on-site to offshore ratio of workers is typically 30:70, where 30% of the workers are located onshore at the client’s site in the U.S., while 70% of the workers are located offshore, in India, where wages are a tenth of U.S. wages. The firm ships as many jobs overseas as possible, but a sizable share of the work cannot be offshored because certain tasks and jobs are geographically sticky requiring workers to have physical proximity to the client in the U.S. This is why roughly 30% of the work remains onshore.

Rather than hire U.S. workers to perform the onshore work, these firms hire large numbers of H-1B (and L-1) visa workers to fill the jobs in America. Exploiting the visa programs enables them to drive revenue growth and increase firm profitability. Hiring visa workers instead of U.S. workers offers advantages. The H-1B guestworkers are controllable, indentured and are paid less than the U.S. workers, and they facilitate the transfer of work to offshore teams in India. The upshot is that access to mass numbers of H-1B visas is essential to their highly lucrative business model.

Employer	Initial (New Workers Capped)	Continuing (Renewals, Job Transfers, Amendments)	Total Approvals
Cognizant Technology Solutions	30,001	122,921	152,922
Infosys Limited	29,883	75,053	104,936
Tata Consultancy Services	26,921	64,225	91,146
Top 3 Total	86,805	262,199	349,004
Annual Average Top 3	8,681	26,220	34,900
Source: USCIS H-1B Employer Data Hub, Annual tables 2013-2022			

Table 2 shows that each firm generates more than half of its revenue from North America, accounting for more than \$10 billion per year. Yet the workforce that delivers these services to U.S. customers is overwhelmingly Indian nationals, located offshore and imported as visa workers on-site. The scale of the workforce for these companies is among the largest of any white-collar professional company in the world. For example, even though Cognizant generated three quarters of its revenue from North America, it has 258,500 workers in India and a mere 41,100 located in North America, the majority of whom are Indian nationals in the U.S. on a guestworker visa.¹

Employer	Headquarters	Annual Revenue (USD)	% Revenue from North America
Cognizant Technology Solutions	US	\$19 billion	74%
Infosys Limited	India	\$18 billion	62%
Tata Consultancy Services	India	\$27 billion	53%

Sources: Annual Reports^{2, 3, 4}

These are not outliers nor anecdotes. H-1B-outsourcing companies are the largest recipients of H-1B visas. Seven of the top ten H-1B employers in FY22 used the H-1B program primarily to offshore US jobs, the most common use of the H-1B visa.⁵ This is the empirical reality of how the H-1B labor market behaves.

Through a series of exposés, the mainstream press highlighted stunning examples of how these three firms have replaced US workers with low-paid H-1B workers, with the US workers required to train their H-1B replacements as a condition of receiving severance and unemployment insurance. Cognizant was a lead outsourcer where 250 U.S. Disney IT workers lost their jobs and were forced to train their H-1B and offshore replacements.⁶ Infosys and Tata Consultancy Services were both lead contractors in the scandal involving the displacement of 400 U.S. workers at Southern California Edison by H-1B workers.⁷ There are countless other cases of displaced U.S. workers training their H-1B replacements, most of which are never reported because it is not new and therefore not deemed as *newsworthy*.

¹ Cognizant: Form 10-K Annual Report Fiscal Year Ended Dec 31, 2022. Retrieved: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1058290/000105829023000027/ctsh-20221231.htm>

² Cognizant: Form 10-K Annual Report Fiscal Year Ended Dec 31, 2022. Retrieved: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1058290/000105829023000027/ctsh-20221231.htm>

³ Infosys Limited: Form 20-F Annual Report Fiscal Year Ended Mar 31, 2023. Retrieved from: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1067491/000095017023028187/infy-20230331.htm>

⁴ Tata Consultancy Services: Integrated Annual Report 2022-23. Retrieved from: <https://www.tcs.com/content/dam/tcs/investor-relations/financial-statements/2022-23/ar/annual-report-2022-2023.pdf>

⁵ Ron Hira and Daniel Costa, “Tech and outsourcing companies continue to exploit the H-1B visa program at a time of mass layoffs,” Table 1, Economic Policy Institute, April 11, 2023. Retrieved from: <https://www.epi.org/blog/tech-and-outsourcing-companies-continue-to-exploit-the-h-1b-visa-program-at-a-time-of-mass-layoffs-the-top-30-h-1b-employers-hired-34000-new-h-1b-workers-in-2022-and-laid-off-at-least-85000-workers/>

⁶ Julia Preston, “Lawsuits Claim Disney Colluded to Replace U.S. Workers With Immigrants,” *New York Times*, Jan 25, 2016. <https://www.nytimes.com/2016/01/26/us/lawsuit-claims-disney-colluded-to-replace-us-workers-with-immigrants.html>

⁷ Leslie Berestein Rojas, “Feds investigating Southern California Edison contractors after allegations of work visa abuse,” *KPCC.org*, <https://www.kpcc.org/2015-06-12/feds-investigating-so-cal-edison-after-allegations>

IT services companies are staffing firms that resell labor by providing workers to clients. They gain competitive advantage by offering clients lower cost *workers*. The firms do not make products or drive technological innovation. They perform little research and development (R&D) and file for very few patents. Their principal innovation, if it can be called an innovation, is *wage arbitrage*, i.e., exploiting regulatory loopholes and government regulatory non-enforcement to pay below-market wages and provide substandard working conditions to H-1B workers.

For the purposes of this committee the business model results in major net losses of jobs and depressed wages for U.S. citizens and immigrants alike, wage theft from H-1B workers, loss of technical knowhow, and a drain on the federal budget.

Federal Lawsuits Shed New Light on the H-1B Program's Exploitation by Outsourcing Firms

Two recent federal lawsuits provide unprecedented and extraordinary details about how crucial the H-1B visa is to the business model. One lawsuit involves HCL and the other involves Cognizant.^{8,9} HCL is an India based IT outsourcing firm that was the number seventh ranked H-1B employer in 2022. It has been involved in at least two public scandals, as a lead outsourcer along with Cognizant in replacing the Disney workers with H-1B workers and as the lead firm replacing about 90 University of California workers with H-1B workers.¹⁰ The University of California case was featured by the television newsmagazine *60 Minutes* in a segment titled "You're Fired."¹¹

The following practices appear to be common amongst the outsourcing firms:

- Outsourcing firms file applications for far more visas in a year than they forecast they will have positions available. They do this to game the random lottery selection process to ensure they receive all the visas they could ever need in a given year. If the lottery odds are 33%, or one-in-three, and the firm estimates it will need 2,000 new visa workers then it applies for 6,000 new visas with the expectation that 2,000 will be selected in the lottery. By gaming the lottery, it turns its odds from 33% to 100%. This practice is a violation of the law since an employer must have a bona fide position available before applying for a new visa with USCIS. But the firm does not have jobs for 6,000 workers. USCIS should investigate this illegal practice that is widespread. Such practices crowd out the legitimate users of the H-1B visa program.
- Outsourcing firms stockpile thousands of workers with valid H-1B visas abroad to support projected future growth – that is, to wait until actual positions materialize in the U.S. They refer to such H-1B workers as *travel-ready* or *visa-ready*. This practice is illegal, again because there was no bona fide position available for the worker at the time the visa applications were submitted to the government.

⁸ United States of America, ex rel. Ralph Billington, Michael Aceves, and Sharon Dorman (Plaintiffs) v. HCL Technologies LTD. and HCL America, INC. (Defendants). Fourth Amended Complaint for Violations of the False Claims Act. United States District Court for the District of Connecticut. Civil Action No. 3:19-CV-1185 (MPS). <https://files.epi.org/uploads/HCL-whistleblower-complaint-48-Fourth-Amended-Complaint-redacted.pdf>

⁹ Christy Palmer et al v. Cognizant Technology Solutions Corporation et al. Case Number: 2:17-cv-06848

¹⁰ Michael Hiltzik, "Column: How the University of California exploited a visa loophole to move tech jobs to India," *Los Angeles Times*, Jan 6 2017. <https://www.latimes.com/business/hiltzik/la-fi-hiltzik-uc-visas-20170108-story.html>

¹¹ <https://www.cbsnews.com/news/are-u-s-jobs-vulnerable-to-workers-with-h-1b-visas/>

- Outsourcing firms meticulously monitor and manage utilization rates of visa-ready workers. They maximize their use of visa-ready workers by prioritizing them for projects over incumbent U.S. workers they employ, and ensuring they remain in the U.S. for the longest time period permitted by the visa. Strong preferences for visa over U.S. workers appear in disparate employment patterns for hiring, promotion, and termination.
- Outsourcing firms map their H-1B applications to positions where it can save the most on labor costs compared to what it pays its U.S. employees. Paying H-1B visa workers less than what it pays similarly employed U.S. workers is a clear violation of the *actual wage* attestation the firm makes in its Labor Condition Application submitted to the Department of Labor. Simply put, the firms are practicing rampant wage theft from their H-1B workers who are required to be paid at least as much as their similarly situated non-visa counterparts. In the case of HCL, we estimate this to be \$95 million per year.¹²

Table 3 shows, for staff experts in Oracle, HCL pays its H-1B workers \$55,000 less than its U.S. workers.¹³

Table 3: Annual wages of HCL Oracle experts by immigration status of worker, 2015			
U.S. citizen or permanent resident	H-1B visa worker, hired in India	Wage premium for U.S. worker	% by which U.S. citizen wage exceeds H-1B wage
\$140,240	\$85,459	\$54,781	64%

These firms dominate the H-1B program because of a series of mistakes in both statute and administrative implementation making the program easy to exploit.

Mistake 1. H-1B Program Eligibility Standards Are Too Low – Virtually Everyone Qualifies So There’s Nothing Special About the Pool of Applicants

The H-1B is a guestworker visa for occupations that typically require a bachelor’s degree. While the program is officially referred to as the *Specialty Occupation* visa, it’s a misnomer since there isn’t anything special about the eligible occupations.¹⁴ Such occupations include virtually any white-collar professional job ranging from accounting to engineering to schoolteachers to journalism. In addition to occupational eligibility, workers must meet a minimum educational attainment. Foreign workers must hold at least a bachelor’s degree or have equivalent experience to qualify for the H-1B. There isn’t

¹² Ron Hira and Daniel Costa, “New evidence of widespread wage theft in the H-1B visa program: Corporate document reveals how tech firms ignore the law and systematically rob migrant workers,” Economic Policy Institute, Dec 9, 2021. <https://www.epi.org/publication/new-evidence-widespread-wage-theft-in-the-h-1b-program/>

¹³ Table reproduced from Ron Hira and Daniel Costa, “New evidence of widespread wage theft in the H-1B visa program: Corporate document reveals how tech firms ignore the law and systematically rob migrant workers,” Economic Policy Institute, Dec 9, 2021. <https://www.epi.org/publication/new-evidence-widespread-wage-theft-in-the-h-1b-program/>

¹⁴ U.S. Citizenship and Immigration Services, “H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models,” Retrieved from: <https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations>

anything special about this level of educational attainment since 40% of American 25-29 year-olds hold a bachelor's degree.¹⁵

The result is that practically a limitless number of potential foreign college-educated workers are eligible for the H-1B program. The eligibility standards should be raised substantially to select for the best and brightest. As it stands, most of those who are awarded visas have only ordinary skills, skills that are already abundantly available from the U.S. labor force.

Mistake 2. DOL arbitrarily sets the prevailing wage – required minimum wage – too low, letting H-1B employers undercut local market wages.

DOL's current formula for determining the H-1B *prevailing wage* is too low, far below market wages, creating strong profit incentives for firms to hire lower-paid H-1B workers over U.S. workers. This is precisely why Cognizant and HCL were able to replace those Disney workers with lower paid H-1B workers, Infosys and Tata Consultancy replaced Southern California Edison workers, and HCL replaced University of California workers.

DOL's current formula is completely arbitrary. The Department's economists and administrators cannot justify why it set the wages so low because there is no model nor rationale to support it.

Most employers take advantage of this unconscionable and unforced mistake. Sixty percent of H-1B positions certified by the U.S. Department of Labor (DOL) are assigned wage levels well below the local median wage for the occupation.¹⁶

In its rulemaking process, DOL estimated that employers were underpaying H-1B workers by \$15.6 billion per year worth \$156 billion over the course of ten years.¹⁷ Those \$156 billion in additional wages would make the federal budget position far better.

Mistake 3: DHS Selects H-1B Recipients by Lottery Instead of Highest Wages or Skills

DHS selects H-1B workers by random lottery rather than by a rational process designed to select the best candidates.

Since H-1B program eligibility standards are so low there are far more H-1B applications than available visas for cap employers. For example, in FY24 there were 760,000 applications for 85,000 slots.

A rational government administrator would award visas to the very best 85,000 applicants out of the pool. Instead, DHS inexplicably awards the visas by *random* lottery. The DHS process strongly favors H-1B-outsourcing firms like HCL which are rigging the lottery system.

¹⁵ Digest of Education Statistics, National Center for Education Statistics, U.S. Department of Education, "Table 104.20. Percentage of persons 25 to 29 years old with selected levels of educational attainment, by race/ethnicity and sex: Selected years, 1920 through 2022," Retrieved from: https://nces.ed.gov/programs/digest/d22/tables/dt22_104.20.asp on Sep 10 2023.

¹⁶ Daniel Costa and Ron Hira, "H-1B visas and prevailing wage levels: A majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages," Economic Policy Institute, May 4, 2020. Retrieved from: <https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels/>

¹⁷ Employment and Training Administration, US Department of Labor, "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States," Jan 14, 2021. <https://www.regulations.gov/document/ETA-2020-0006-2342>

Mistake 4: DOL Creates Outsourcing Loophole – Gutting Statutory Worker Protections by Exempting Secondary Employers from LCA Attestations

The Labor Condition Application (LCA) is the primary way the government protects both H-1B and U.S. workers. Every employer must file an LCA with, and receive approval from, the DOL as a condition of hiring or employing an H-1B worker.

On the form, employers attest they will pay the *actual wage* and not *adversely affect* the working conditions of workers similarly employed. Congress intended these statutory protections would prevent employers from underpaying H-1B workers - hiring H-1B workers because they are lower-paid than U.S. workers and to ensure their employment does not adversely affect U.S. workers. Disney workers like Leo Perrero, who were forced to train their H-1B replacements, are obviously being adversely affected when Cognizant and HCL places those H-1Bs at Disney. So, why wasn't he protected?

In a bizarre decision, DOL chooses to interpret the LCA as protecting only those employees who are directly employed by the same firm that hires the H-1B workers. It's as though DOL is blind to the modern U.S. labor market where outsourcing is commonplace, especially so in the highly fissured IT labor market.

In this case, if Disney directly hired the H-1B worker to replace its U.S. workers, the U.S. worker could file a complaint with the Wage & Hour Division for a violation of the LCA. But because Disney contracted with Cognizant and HCL to hire the lower-paid H-1B workers, all protections for Disney workers magically disappear. Congress surely didn't intend this outcome when it wrote protections into H-1B law.

The upshot is that DOL has incentivized H-1B-outsourcing abuse by creating the outsourcing loophole.

Mistake 5: No Enforcement

The statutory language on enforcement for the H-1B program is very unusual amongst guestworker programs. There are significant limitations on how the Wage & Hour Division can investigate program participants and unrealistic time limits for filing a complaint. In the thirty-three years of the program lifespan there has never been an investigation into a violation of either the *actual wage* or *adverse affect* protections.

The HCL documents showing large wage theft from H-1B workers indicate it is intentionally and systematically violating its *actual wage* obligations. Since the Wage & Hour Division's hands may be tied, the Department of Justice's (DOJ) Civil Division, in conjunction with DOL and DHS, should vigorously prosecute visa fraud under the False Claims Act, consistent with a recent federal court decision applying the False Claims Act to H-1B visa fraud.

Mistake 6: No Labor Market Test

Contrary to widespread misperceptions, including by President Biden, employers are not required to recruit U.S. workers before hiring an H-1B worker.¹⁸ A labor market test requiring recruitment would ensure the H-1B program is targeted towards filling genuine labor shortages.

¹⁸ Patrick Thibodeau, "Clueless in the White House," *ComputerWorld*, Mar 30, 2012. Retrieved from: <https://www.computerworld.com/article/2472754/clueless-in-the-white-house.html>

The dysfunctional H-1B labor market we see today, one that is unfair H-1B and U.S. workers alike and subsidizes the offshoring of U.S. technology jobs, is a direct result of these mistakes and bad design.

I will briefly mention two other guestworker programs that are in dire need of scrutiny and reform.

The *L-1 Intracompany Transfer* visa allows U.S. and foreign multinational corporations to transfer key workers from overseas operations. The L-1 labor market is large and suffers from many of the same problems as the H-1B. The L-1 program has no wage rules, no minimum educational attainment, no cap, and ambiguous eligibility criteria such as the definition for what qualifies as *specialized knowledge*. We have no visibility into the behavior of the L-1 labor market because the government collects so little information about the market participants and publishes even less. We don't know how many L-1 workers are in the U.S., how much they are paid, their educational attainment, and whether they are replacing U.S. workers. We do know that many of the top L-1 employers are H-1B-outsourcing firms who are using the program somewhat interchangeably with the H-1B program and a few cases where U.S. workers trained their L-1 replacements.

Optional Practical Training (OPT) provides employment authorization for international students. While the bureaucrats who created the program insist it exists to round out the education of a foreign student attending a U.S. university, in practice it is an unauthorized guestworker visa program that is valid for up to 36 months for certain students. Every OPT labor market participant – foreign students, universities, employers, educational recruiters, and labor brokers – treats the OPT as a guestworker visa while DHS insists it is training and education.

Perhaps because of this denialism by DHS, the rules governing the OPT labor market are the most poorly conceived of any guestworker program. OPT eligibility standards are extraordinarily low. It is appropriate to think of the OPT as an entitlement program. Through this program foreign students are entitled to access to the U.S. labor market. Virtually any student, no matter their skills, who attends virtually any higher education institution, no matter the quality of the institution or program, is eligible. In fact, thousands of students have enrolled in sham universities simply to gain labor market access via the OPT program. There are no wage standards. OPT “trainees”, who are in fact workers, can be paid zero wages. There is no cap on the number of OPT workers.

Program oversight is pathetic. Immigration and Customs Enforcement (ICE) is tasked with overseeing the program. Proper oversight would require significant expertise in education and labor markets, yet ICE zero expertise in either. So given its obvious inadequacies, the agency outsourced its oversight duties to universities, the very organizations that profit from selling labor market access through the OPT. To say the program is riddled with conflicts of interest is an understatement.

The OPT labor market undercuts the bargaining power of U.S. workers and especially of U.S. students who are recent graduates. Since DHS continues to insist that OPT is training, employers and OPT recipients are exempt from federal payroll taxes (FICA). As a result, the government is subsidizing employers a whopping 15% to hire OPT over U.S. workers.

OPT workers directly compete with, and substitute, for U.S. workers. I know at least one worker who unwittingly trained his OPT replacement. When he filed formal complaints to ICE and the Department of Justice, the agencies told him tough luck.

Conclusion

Recent bipartisan interest in re-shoring jobs is a very positive development even if those efforts are costly. For example, the Congressional Budget Office estimates the CHIPS & Science Act, intended to re-shore semiconductor manufacturing, increases the deficit by \$79 billion.¹⁹

In contrast, reforming guestworker programs would re-shore tens of thousands of jobs while simultaneously improving the U.S. budget position. There are no government costs involved in increasing program standards and selecting higher wage workers. In fact, tax revenues would increase along with economic activity.

Poorly designed H-1B and L-1 labor markets have led to the offshoring of hundreds of thousands of jobs over the past twenty-five years. The government is in effect subsidizing the offshoring of high-paying U.S. jobs in information technology that once served as a pathway to the middle class, including for workers of color.

Returning to the question of immigration. We should have a robust, selective, effective, and accountable skilled immigration system. If the U.S. needs specific skilled immigrants, then we should offer a clear path towards permanent residence – immigrant visas – rather than repeatedly expanding guestworker programs.

¹⁹ Congressional Budget Office, “Estimated Budgetary Effects of H.R. 4346,” July 21, 2022. Retrieved from: <https://www.cbo.gov/publication/58319> on Sep 10, 2023.